

**EDWARD D. FAGAN ESQ.**

Five Penn Plaza, 23<sup>rd</sup> Floor, New York, NY 10001  
Tel # (646) 378-2225, New Fax # (646) 304-6446  
New Email Address: [ed.fagan@global-litigation-partners.com](mailto:ed.fagan@global-litigation-partners.com)

Honorable Lewis A. Kaplan USDJ  
United States District Court  
Southern District of New York  
500 Pearl Street, Chambers, Room 1310  
New York, NY 10007

Monday 28 January 2008

*Re: Fagan v. Lowy et al 07-cv-10293*

Honorable Judge:

I am the plaintiff in the above referenced matter and I write to inform Your Honor that the Order to Show Cause was not served in accordance with par. 3 of Your Honor's Order.

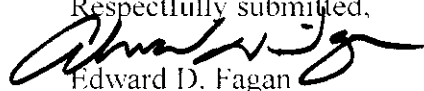
Mr. Perle faxed only 6 pages of Friday at 2:43pm, which was only the Order itself. (*See Exh. 1*). Mr. Perle's statement in the last par. of his fax that "The Order to Show Cause and all of the supporting documents, with full exhibits, are being transmitted to (me) by email" is disingenuous. Mr. Perle sent me an email; however, he sent me the attachments coded as ".DAT" files. (*See Exh. 2*). Mr. Perle knows that I cannot open ".DAT" files and that they do not conform to the ".PDF" files that are used by the Court ECF system. Mr. Perle knows that if he wants to serve me with documents electronically he send "PDF" files and not ".DAT" files which he knows and which I have repeatedly told him – the documents cannot be opened - or he should just fax the papers. (*See Exh. 3*). Mr. Perle did not serve the Order to Show Cause and supporting papers by fax, or by hand (he knows where I live), or call me to inform me that he had received an Order and inquire where I was in the afternoon so he could serve them, and he did not send them in an email in a format that could be opened. Mr. Perle failed to comply with the service provisions of Your Honor's Order.

Further, the Court should note that I have filed Notice of Voluntary Dismissal pursuant to FRCP 41 (a) (1) (*Doc. # 14*), copy attached as *Exh. 4*. Therefore, there is no case in Federal Court.

I respectfully submit that the Order to Show Cause should be voided (i) for failure to comply with service and (ii) in light of the Voluntary Dismissal.

Should the Court wish to consider any aspect of Mr. Perle's papers, despite the failure to comply with service provisions or the procedural issue that there is now no case in the Southern District of New York, I respectfully request that the Court adjourn the matter until such time as I have been properly served and am afforded an opportunity to prepare and submit a timely response.

Respectfully submitted,



Edward D. Fagan

Attached Exh. 1 – 4

cc. Michael Perle Esq. – Via Fax & Electronically  
Robert Hantman Esq. – Via Fax

LAW OFFICES  
MICHAEL R. PERLE, P.C.  
(201) 864-0200 (NJ)  
(646) 688-4904 (NY)  
FAX (201) 617-5500  
m.perle@earthlink.net

TO: Edward D. Fagan, Esq.  
646-304-6446  
Robert J. Hantman, Esq.  
212. 755.1989

FROM: Michael R. Perle

DATE: January 25, 2008 (2:28pm)

RE: Fagan v. Lowy, 07 CIV 10293

\*Only received  
Order -  
not the  
supporting  
affidavit,  
memorandum  
or declaration  
CWT

NUMBER OF PAGES (INCLUDING COVER PAGE): 6

IF YOU DO NOT RECEIVE ALL PAGES CALL 201 864-0200 (NJ) or NY 646-688-4904

MESSAGE:

Dear Mr. Fagan,

Annexed hereto, please find:

(a) the Order to Show Cause Entered today in this matter by the Hon. Lewis A. Kaplan, which has been simultaneously transmitted to you by Fax;

(b) Memorandum of Law in support of Order to Show cause.

(c) Affidavit of James L. Lowy, Esq., with exhibits

(d) Declaration in support of Michael R. Perle.

The Order to Show Cause and all of the supporting documents, with full exhibits, are being transmitted to you by e-mail.

Michael R. Perle

CONFIDENTIALITY NOTICE:

THE INFORMATION CONTAINED IN THIS TELE-FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL AND IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL(S) AND/OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY UNAUTHORIZED DISCLOSURE, COPYING, DISTRIBUTION, OR ANY ACTION IN RELIANCE ON THE CONTENTS OF THE TELE-COPIED MATERIALS IS STRICTLY PROHIBITED AND REVIEW BY ANY INDIVIDUAL OTHER THAN THE INTENDED RECIPIENT SHALL NOT CONSTITUTE WAIVER OF THE ATTORNEY-CLIENT PRIVILEGE. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE (COLLECT) TO ARRANGE FOR THE RETURN OF THE MATERIALS.

Exhibit 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EDWARD D. FAGAN, ESQ.,  
Plaintiffs,

07-CV -10293(LAK)

vs.

JAMES F. LOWY, ESQ., INTERNATIONAL  
LAW GROUP, LLC, FLORIDA LAW GROUP,  
LLC, et Al., ROBERT J. HANTMAN, ESQ., et  
Al.,

Defendants.

ORDER TO SHOW CAUSE  
(With Temporary Restraints)

THIS MATTER being opened to the Court upon an application for Order to Show Cause by defendants James F. Lowy, Esq. ("Lowy"), International Law Group, LLC ("ILG"), and Florida Law Group, LLC, through their counsel Michael R. Perle, PC, pursuant to the All Writs Act, 28 U.S.C.A. §1651(a), 28 U.S.C.A. §1927, F.R.CIV. P. 65, and Local Civ. Rules 54.2, supported by (a) the Declaration of Michael R. Perle, Esq., with annexed exhibits, and (b) Affidavit of James F. Lowy, Esq., with annexed exhibits, and (c) the Notice of Removal heretofore filed in this matter on November 13, 2007, let Plaintiff or his attorneys show cause before HON. LEWIS A. KAPLAN of this Court, at the United States Court Courthouse, 500 Pearl Street, New York, NY 10007-1312 on the 3<sup>rd</sup> Day of January, 2008, at 3 p. M., or as soon thereafter as counsel can be heard, why an order should not be made and entered against plaintiff Edward D. Fagan ("Fagan"), his agents, and attorneys, and/or any of their employees, officers, representatives, agents, or other persons acting in concert with them, or under their direction, or control, pendente lite, from:

- a. Vacating all temporary restraints and discharging the Order to Show Cause entered by the New York Supreme Court on October 31, 2007 in the within matter (Index No. 114562/07), prior to its removal to this Court;
- b. Enjoining the continuation of the prosecution of the within action by Edward D. Fagan, Esq.

*Fagan v. Lowy, 07Civ10293, Ord. to Show Cause, p 1*

("Fagan"), or the prosecution by Fagan, as an attorney, or pro se plaintiff, of any other action in the Southern District of New York, unless and until plaintiff Fagan

- (i) has paid and discharged in full all sanctions and awards of counsel fees and costs which have been imposed against Fagan in the Southern District and Eastern District of New York which currently remain unpaid and outstanding, including any awards which may be the subject of any pending appeal, to the extent payment of same is not secured by a supersedeas bond;
  - (ii) Fagan has in addition posted a good bond in an amount of no less than \$150,000, or such other amount as the Court may deem reasonably sufficient to cover in full any of sanctions or fees and costs which may be entered against Fagan may hereinafter in the within matter;
- c. Enjoining and restraining plaintiff Fagan, pendente lite, either as an attorney, or as a party-plaintiff, from conducting any further proceedings, or serving or submitting for filing any pleadings, or other documents, submissions in a matter captioned Edward D. Fagan, Esq., Dr. Bernd Geler and Dr. Gerhard Podovsovnick vs. James F. Lowy, Esq., International Law Group, Florida Law Group, LLC, Michael R. Perle, Esq., and Michael R. Perle, PC, Index No. 115473/2007, filed in the Supreme Court of New York New York County on or about November 19, 2007;
- d. Enjoining and restraining plaintiff Fagan, pendente lite, either as an attorney, or in any other capacity, from communicating through any means, including but not limited to the transmission of any document via the mails, facsimile transmission, email, hand-delivery or any other means either directly, or indirectly through any third person, with Harvey S. Grossman, Esq., Debra Grossman, or The Lions Group, Ltd., except upon notice to, and with the express written permission of Michael R. Perle, Esq., or serving any complaint, or other pleading upon said parties or their officers, agents or representative.
- e. Enjoining and restraining plaintiff Fagan, either as an attorney, or as a party-plaintiff, except

with leave of court, granted in accordance with the requirements, limitations and procedures established in In Re Martin Trigona, 737 F.2d 1254 (2d Cir.1984), In re Martin-Trigona, 763 F.2d 140 (2 Cir.1985) and progeny, from initiating or prosecuting any other matter in any forum within the States of New York or New Jersey which matter was not filed as November 13, 2007 (the date of removal to this Court of the within action), and names as a defendant or seeks relief in any form against James F. Lowy, Esq. ("Lowy"), International Law Group, LLC ("ILG"), Florida Law Group, LLC, Michael R. Perle, Esq. ("Perle"), Michael R. Perle, P.C., Harvey S. Grossman, Esq., or The Lions Group, Ltd., Jay J. Rice, Esq., or any other attorney or firm of attorneys named as a defendant in the within case, or who has appeared as counsel for any party in either the within action or in In Re: Ski Train Fire in Kaprun Austria on November 11, 2000, 01-MDL-1428 (SAS), i.e., the "Kaprun Cases";

- f. Enjoining and restraining plaintiff Fagan pendente lite, without leave of this Court, from communicating in any manner, or through any means, including but not limited to the transmission of any document via the mails, facsimile transmission, email, hand-delivery or any other means, either directly, or indirectly through any third person, with either (i) the Character and Fitness Committee of the Appellate Division-First Department, Supreme Court of New York, and/or its members, agents and representatives, or (ii) the Bar of the State of Florida, and/or its members, agents and representatives regarding James F. Lowy, Esq., International Law Group, LLC, or Florida Law Group, LLC.

**INTERIM RESTRAINT**

**IT IS FURTHER ORDERED:**

1. That in order to preserve the jurisdiction of the Court and the integrity of its proceedings and orders, and to avoid the possibility of unnecessary multiplication of litigation, irreparable injury to defendants Lowy, ILG, and FLG, and their property, business and attorney client relationship with their counsel, Perle, pending the return date hereof, and/or a further order of this Court, plaintiff Fagan, and all of his employees, officers, representatives, agents, or

*Fagan v. Lowy, 07Civ10293, Ord. to Show Cause, p 3*

other persons acting in concert with him, or under their direction and control, are

HEREBY ENJOINED, RESTRAINED AND PROHIBITED from

- a. serving the complaint in, or submitting for filing any pleadings or other documents in, or otherwise further proceeding with the prosecution of a matter captioned Edward D. Fagan, Esq., Dr. Bernd Geier and Dr. Gerhard Podewsovnick vs. James F. Lowy, Esq., International Law Group, Florida Law Group, LLC, Michael R. Perle and Michael R. Perle, PC, Supreme Court of New York-New York County, Index No. 115473/2007, or Initiating any new action against any of the defendants in that matter;
- b. communicating with, contacting, or attempting to contact the malpractice insurance carriers of the James F. Lowy, Esq., International Law Group, Florida Law Group, LLC, Michael R. Perle and Michael R. Perle, PC, and
- c. communicating in any manner regarding defendants James F. Lowy, Esq. with the Character and Fitness Committee of the Appellate Division-First Department, Supreme Court of New York.

2. Defendants may move before this Court prior to the return date, as provided for under F.R.Civ.P. 65(b), to vacate or modify the within temporary restraints contained herein.

3. SUFFICIENT CAUSE APPEARING THEREFORE, let service of true copies of this Order to Show Cause, together with the supporting declaration of Michael R. Perle, with annexed exhibits, and Affidavit of James F. Lowy, Esq., with annexed exhibits, and the accompanying memorandum of law, be made upon EDWARD D. FAGAN, attorney pro se,

5 Penn Plaza, 23rd. Floor, New York, NY 10001 ~~as follows:~~

*by hand or other means ensuring their delivery by 4:30 pm on January 25, 2008.*

4. True copies of this Order to Show Cause, together with the supporting declaration of Michael R. Perle, with annexed exhibits, and Affidavit of James F. Lowy, Esq., with



annexed exhibits, and the accompanying memorandum of law, shall also be served upon ROBERT J. HANTMAN, ESQ. and HANTMAN ASSOCIATES by USPO 1<sup>st</sup> class mail, hand delivery or express mail service within 7 days of the entry of the within Order to Show Cause *h*

5. Answering papers shall be served <sup>*and filed*</sup> ~~upon the Court and the respective counsel for each of the defendants as follows.~~ *no later than January 28, 2008* *W*

- at 4:30 pm.*  
6. *Reply papers shall be answered and filed no later than January 29, 2008 at 4 p.m.* *W*

Dated:

*Jan. 25, 2008*

~~ENTER~~

*Ken Hayler*

U.S.D.J.

From: "Michael R Perle" <m.perle@earthlink.net>  
Subject: **FW: Fagan v Lowy 07 CIV 10293 (LAK)**  
Date: January 25, 2008 3:24:46 PM EST  
To: <ed.fagan@global-litigation-partners.com>  
Reply-To: <m.perle@earthlink.net>  
1 Attachment, 4.4 MB Save

From: Michael R Perle [mailto:m.perle@earthlink.net]  
Sent: Friday, January 25, 2008 2:32 PM  
To: 'ed.fagan@global-litigation-partners.com'  
Cc: 'hantmanrj@aol.com'; James F. Lowy Esq.  
(jameslowy@floridalawgroup.com)  
Subject: Fagan v Lowy 07 CIV 10293 (LAK)

Dear Mr. Fagan,

Annexed hereto, please find:

(a) the Order to Show Cause Entered today in this matter by the Hon.  
Lewis A. Kaplan, which has been simultaneously transmitted to you by Fax;

(b) Memorandum of Law in support of Order to Show cause.

(c) Affidavit of James L. Lowy, Esq., with exhibits

(d) Declaration in support of Michael R. Perle.

The Order to Show Cause and all of the supporting documents, with full  
exhibits, are being transmitted to you by e-mail.

Michael R. Perle

winmail.dat (4.4 MB)

Exhibit 2



From: "Edward D. Fagan" <Ed.Fagan@global-litigation-partners.com>  
Subject: **Re: Letter to Judge Daniels 12/7/07**  
Date: December 10, 2007 10:58:29 AM EST  
To: <m.perle@earthlink.net>

Michael:

You keep sending things that are coded as .dat files - NOT PDF - files.

Please just fax it to me at (646) 304-6446, as I requested.

Ed

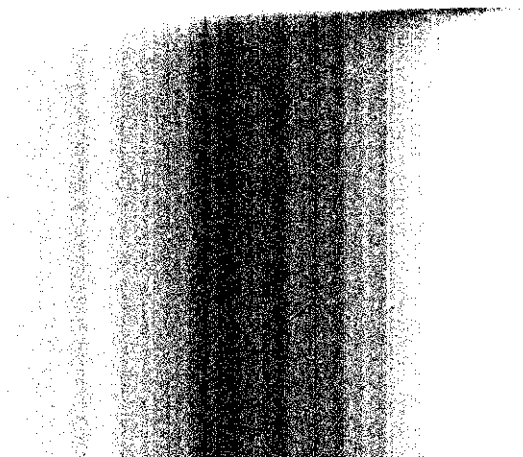
Edward D. Fagan Esq.  
5 Penn Plaza, 23rd Floor, New York, NY 10001  
Tel. (646) 378-2225 & New Fax # (646) 304-6446  
Email: [ed.fagan@global-litigation-partners.com](mailto:ed.fagan@global-litigation-partners.com)

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On Dec 10, 2007, at 10:54 AM, Michael R Perle wrote:

Attached is letter to Hon. George B Daniels faxed to you on 12/7/07<winmail.dat>

Exhibit 3



From: "Edward D. Fagan" <Ed.Fagan@global-litigation-partners.com>  
Subject: **Re: Letter to Judge Daniels 12/7/07**  
Date: December 10, 2007 11:09:51 AM EST  
To: <m.perle@earthlink.net>

Michael:

This is getting ridiculous and I really do not want to bother the Judge by having to write him to tell him that you are not faxing the document to me.

The document you keep sending is marked as a ".DAT" file - NOT a PDF file. It cannot be opened.

Just fax it to me at (646) 304-6446.

Ed

Edward D. Fagan Esq.  
5 Penn Plaza, 23rd Floor, New York, NY 10001  
Tel. (646) 378-2225 & New Fax # (646) 304-6446  
Email: [ed.fagan@global-litigation-partners.com](mailto:ed.fagan@global-litigation-partners.com)

On Dec 10, 2007, at 11:00 AM, Michael R Perle wrote:

From: Michael R Perle [<mailto:m.perle@earthlink.net>]  
Sent: Monday, December 10, 2007 10:55 AM  
To: '[faganlawintl@aim.com](mailto:faganlawintl@aim.com)'; 'Edward D. Fagan'  
Subject: Letter to Judge Daniels 12/7/07

Attached is letter to Hon. George B Daniels faxed to you on 12/7/07 <winmail.dat>

Perle  
purports  
to serve  
by sending  
files he  
knows I  
cannot  
open.  
He does not  
fax the  
documents

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X		
Edward D. Fagan,	:	
Plaintiff,	:	07-cv-10293 (UA)
	:	
- v -	:	
	:	
James F. Lowy et al	:	
Defendants	:	
----- X		

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NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO FRCP 41 (a) (1)

=====

Plaintiff Edward D. Fagan, in accordance with the provisions of FRCP 41 (a) (1) and prior to Defendants' filing and/or serving of an answer, motion for summary judgment or other responsive pleading, hereby voluntarily dismisses the above action, without prejudice, against all defendants.

Dated: 25 January 2008  
New York, NY

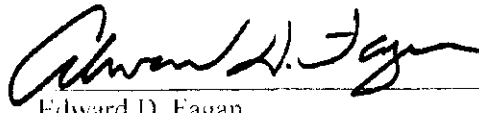
  
\_\_\_\_\_  
Edward D. Fagan  
Five Penn Plaza, 23<sup>rd</sup> Floor, New York, NY 10001  
Tel # (646) 378-2225 / Fax # (646) 304-6446  
Email: [ed.fagan@global-litigation-group.com](mailto:ed.fagan@global-litigation-group.com)  
Plaintiff

Exhibit 4


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused the foregoing

**NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO FRCP 41 (a)**

to be electronically filed with the Clerk of the Court and served upon counsel of record.

Dated: 25 January 2008  
New York, NY

  
/s/ Edward D. Fagan (electronically signed)  
Edward D. Fagan, Esq.